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TELECOPIER  
(201) 491-4697

TWO PENN PLAZA EAST  
NEWARK, N.J. 07105

ONE WORLD TRADE CENTER  
SUITE 7967  
NEW YORK, NY 10048

DENNIS C. LINKEN  
(201) 491-3839

(201) 491-9500

(212) 432-9180

August 1, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

VIA FACSIMILE

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference for 0+ InterLATA Calls  
CC Docket No. 92-77

Dear Mr. Caton:

Our office represents the New Jersey Payphone Association, Inc. ("NJPA"). Enclosed are the NJPA's Comments with reference to the captioned matter.

Thank you for your consideration in this regard.

Very truly yours,

  
Dennis C. Linken

DCL:jel

cc: Barbara Silkworth, Executive Director  
Ronald J. Polli, President

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**COMMENTS**

**OF**

**NEW JERSEY PAYPHONE ASSOCIATION, INC.**

**Dated: August 1, 1994**

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On May 19, 1994, the Commission adopted a Further Notice of Proposed Rulemaking ("Further Notice"), in which the Commission sought comments of interested parties with regard to the possible implementation by the Commission of a Billed Party Preference ("BPP") plan for 0+ interLATA calls. New Jersey Payphone Association, Inc. ("NJPA"), is concerned about the adverse consequences which it believes will result from adoption by the Commission of a BPP plan. NJPA therefore strenuously urges that the Commission not adopt such a plan. In support of its position, NJPA relies on the within comments.

## INTRODUCTION

1. NJPA is a not-for-profit corporation organized under the laws of the State of New Jersey. NJPA, whose principal office is located at 108 Main Street, Oceanport, New Jersey 07757, is a trade organization whose members are primarily small- to mid-sized pay telephone operators. NJPA has participated in several proceedings before the New Jersey Board of Public Utilities affecting the pay telephone industry generally and the public interest related thereto, as well as Commission proceedings affecting its members. As will be further explained hereinbelow, NJPA's members will be directly and adversely affected by the outcome of the instant proceedings in the event that the Commission determines to adopt a BPP plan. As such, NJPA's members wish to comment, through NJPA, on the relevant issues involved.

2. There are 42 general members of NJPA, who operate, collectively, almost 15,000 of the 20,000 pay telephones in the State of New Jersey. A substantial number of those pay telephones are located in urban areas, often comprised of the poorer, less economically advantaged areas of our cities.

## DISCUSSION

3. NJPA believes that a significant portion of those using its MEMBERS' pay telephones are individuals who otherwise have no readily available residential telephone service. In other words, without the use of the pay telephones operated by NJPA's members, such individuals would not have any convenient means of utilizing the public switched telephone network.

4. More than 150,000 calls per day are made through phones operated by NJPA members. If the Commission were to adopt a BPP plan, NJPA believes such a decision would have adverse economic consequences to NJPA's members. Indeed, NJPA believes that a good

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portion of its pay telephones would be eliminated, as they could no longer be economically operated. Consequently, a decision by the Commission to implement a BPP plan, which would presumably be made on the basis of a benefit to the public, would actually operate to the detriment of the public — and specifically to that portion of the public which can least afford to be without pay telephone service.

5. Not only would the effect of a decision in favor of a BPP plan have a negative impact on the public by way of the simple elimination of phones, thus depriving our poorer residents of their ability to utilize the telephone system, it may also carry with it the potential for dangerous consequences. NJPA estimates that more than 30,000 emergency calls are made each month through the payphones maintained by NJPA's members. Most of the phone locations served by NJPA members had not been previously served by the LECs serving the State. Thus, the elimination of NJPA phones would mean that some portion (perhaps a significant portion) of the calling public would not now be able to make such emergency calls or, at the very least, find it much more difficult to do so. NJPA would urge the Commission not to harm the calling public in this way.

6. As indicated above, a decision which is adverse to the private pay telephone industry would work to the detriment of its customers. In addition, such a decision would adversely affect employees of these small- and mid-sized companies.

7. NJPA members employ more than 300 people in New Jersey. In addition, there are numerous other direct and indirect businesses which support the private payphone industry. A decision by the Commission to adopt a BPP plan would have disastrous consequences for those individuals and businesses. NJPA believes that the implementation of a BPP plan would likely drive most of its members out of business, resulting in default on millions of dollars of personally guaranteed business loans, as well as the loss of jobs and income to its member's employees, further exacerbating the already unfavorable economic situation in New Jersey. We urge the Commission to avoid such harsh consequences.

8. NJPA also wishes to comment with regard to two other points raised by the Commission in its *Further Notice* in this matter. First, the Commission discusses estimated cost savings which it sees as resulting from the implementation of a BPP plan. To be sure, NJPA is not in a position to comment with specificity about cost saving estimates which might result, or, indeed, the costs which would be borne by the carriers (and, ultimately, the public) for the equipment and systems necessary to develop a working BPP plan. Nevertheless, NJPA respectfully suggests that the Commission has erred in its estimate of savings which might accrue to the calling public were a BPP plan implemented.

9. Specifically, and again without questioning the Commission's calculations and adjustments (but, rather, assuming them to be correct), we believe that the Commission erred in combining the two types of estimated savings predicted as a result of BPP implementation. The Commission first indicates that a savings of approximately \$280 million per year would be

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achieved by avoiding the highest priced operator service providers ("OSPs"). *Further Notice*, ¶11. The Commission then goes on to indicate that an additional approximately \$340 million would be saved as a result of the elimination of commissions to premise owners, which would no longer have to be borne by the OSPs. *Further Notice*, ¶12. Thus, the Commission estimates that total annual savings would approximate \$620 million.

10. We believe that, again accepting at face value the estimates for each type of savings, they can not simply be added together to produce estimated total savings.

11. The Commission calculated the estimated \$280 million savings, achieved by avoiding the highest priced OSPs, by comparing the average charge per minute for an operator service call through the three major OSPs as compared to the average charge per minute imposed by third-tier OSPs. However, that difference results in part from the commissions which are paid by those OSPs to premise owners. Thus, eliminating the price differential implicitly already takes into account the elimination of the higher commissions paid by the third-tier OSPs. In essence, then, it would be incorrect to add another \$340 estimated savings on the assumption that those savings would be in addition to the savings resulting from lower per minute charges. In other words, to combine the estimated savings of \$280 million per year from lower rates with approximately \$340 million per year from the elimination of commissions, is double counting.<sup>1</sup>

12. NJPA also wishes to comment on one other area dealt with by the Commission, that pertaining to the ability of the calling public to reach their carrier of choice without the need to dial an alternate access code, such as 10XXX.

13. We understand the Commission's determination that the elimination of 10XXX access codes is, in and of itself, a benefit. However, we would respectfully suggest that such

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<sup>1</sup>While not directly on point or at issue in this proceeding, NJPA believes it is extremely important to discuss, at least briefly, the reason that third-tier OSPs charge rates higher than the three principal OSPs. To some extent, as recognized by the Commission, the costs of third-tier OSPs are higher than those of those of the larger OSPs. In addition, the commissions required by payphone providers from third-tier OSPs are higher than what would otherwise be necessary simply because the costs of those payphone providers are significantly higher than those experienced by their primary competitors — the LECs. Importantly, it is the LECs which are responsible for such discriminatory treatment, for the LECs are the only source of supply for the essential services utilized by private payphone providers. Private payphone providers are a captive audience and must obtain basic telephone service from the LECs. However, rather than the LECs charging their competitors the same costs for those services as are experienced by the LECs, the LECs "gross up" the charges for those same services, often by hundreds or thousands of times. Thus, the operating costs for private pay telephone providers are often hundreds or thousands of times higher than those of the LECs, solely because the LECs have chosen to charge its competitors so much more. As a result, in order to survive, private payphone operators must obtain higher commissions from the OSPs. This totally inequitable situation could be remedied if the charges imposed by the LECs upon their competitors for essential services were controlled.

In other words, if the LECs were no longer allowed to markup their costs to their private payphone competitors, those payphone competitors would not need to receive higher commissions from the OSPs, which, in turn, could therefore lower their rates to the calling public.

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benefit is not as important today as it might have been several years ago. Further, we believe that its importance has been decreasing and will continue to decrease over time. In support of its position, NJPA would point to a recent survey conducted by its members. In short, the survey reveals that approximately 65 percent of the calls go through alternate access channels, *i.e.*, 950, 10XXX or 1-800, rather than going through the pre-subscribed OSP.<sup>2</sup> The percentage of the public which now utilizes Dial Around calling is growing at a rapid rate, in part, no doubt, due to the heavy saturation of advertising and marketing programs by the major OSPs urging the use of 10XXX calling. The fact that Dial Around is working is further demonstrated by the experience of one of NJPA's members that primarily works in the presubscription of LEC phones.<sup>3</sup> In 1989, those phones averaged 28 calls per month per phone. In 1993, the average dropped to 11 calls. During the first half of 1994, that average had fallen by 22 percent to just 8.6 calls per month per phone.

14. Thus, while the elimination of 10XXX access codes might appear to be beneficial at first blush, we believe that will not be the case. The Commission would prevent aggregators from delivering 0+ calls to a pre-selected carrier. We believe that such a policy runs counter to the Commission's already established policies in favor of increased competition in the customer premises equipment, long distance and local exchange markets. A billed party preference plan will constrict competition -- not expand it. Given the other substantial disadvantages of a BPP plan, we believe that, on balance, any benefit is far outweighed by the detriment which would be brought about.

## SUMMARY

15. NJPA urges that the Commission reject the use of a Billed Party Preference plan. Any beneficial impact upon the public will be completely outweighed by the adverse consequences which would result from the implementation of a BPP plan.

16. The calling public will be harmed by the elimination of payphones, some of which are in the poorer, urban areas of our cities, thus depriving the public of the use of such phones.

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<sup>2</sup> This conclusion is borne out by the recent study commissioned by the Competitive Telecommunications Association. "Report on Applicability and Costs of Billed Party Preference - A Market Impact Report," Frost & Sullivan, Inc., October 1993 at p. 4. ("Dial-around has dramatically increased in recent years, accounting for over 50 percent of all traffic in some locations.")

<sup>3</sup> Information provided by NJPA member Digital Technologies, Inc.

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Moreover, as such phones are often used for emergency calls, the harm to the public could be substantial.

17. The implementation of a BPP plan would also have a deleterious effect upon the economy. It would likely result in the dissolution of many private payphone companies and the elimination of the jobs of their thousands of employees throughout the country.

18. For the foregoing reasons, NJPA urges the Commission not to adopt a BPP plan at this time.

Respectfully submitted,

NEW JERSEY PAYPHONE ASSOCIATION, INC.

By:

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Ronald J. Polli,  
President

Dated: August 1, 1994

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**STRYKER,  
TAMS & DILL**

FCC MAIL SECTION

Two Penn Plaza East  
Newark, New Jersey 07105

AUG 2 8 07 AM '94

Telephone: (201) 491-9500

Telecopier: (201) 491-9692

(201) 491-9723

SC 1170

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